

1 John C. Hueston, State Bar No. 164921  
*jhueston@hueston.com*  
2 Moez M. Kaba, State Bar No. 257456  
*mkaba@hueston.com*  
3 Allison L. Libeu, State Bar No. 244487  
*alibeu@hueston.com*  
4 HUESTON HENNIGAN LLP  
523 West 6th Street, Suite 400  
5 Los Angeles, CA 90014  
Telephone: (213) 788-4340  
6 Facsimile: (888) 775-0898

## Attorneys for Plaintiff Monster Energy Company

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MONSTER ENERGY COMPANY, a  
Delaware corporation,

Plaintiff,

VS.

VITAL PHARMACEUTICALS, INC.,  
d/b/a VPX Sports, a Florida corporation;  
and JOHN H. OWOC a.k.a. JACK  
OWOC, an individual,

**Defendant.**

Case No. 5:18-cv-1882-JGB-SHK

**PLAINTIFF MONSTER ENERGY  
COMPANY'S NOTICE OF MOTION  
AND MOTION TO EXCLUDE  
CERTAIN TESTIMONY OF  
DEFENDANTS' EXPERT WITNESS  
DREW VOTH**

Date: February 7, 2022

Time: 9:00 a.m.

## Courtroom: 1

Judge: Hon. Jesus G. Bernal

1           **TO ALL PARTIES AND THE CLERK OF THE COURT:**

2           **PLEASE TAKE NOTICE** that on February 7, 2022, at 9:00 a.m., or as soon  
3 thereafter as the matter may be heard before the Honorable Jesus G. Bernal, United  
4 States District Judge, in Courtroom 1 of the United States District Court, Central  
5 District of California, 3470 Twelfth Street, Riverside, California 92501, Plaintiff  
6 Monster Energy Company (“Monster”) will and hereby does move this court for an  
7 order excluding certain expert opinions and testimony of Drew Voth, expert witness  
8 for Defendants Vital Pharmaceuticals, Inc. (“VPX”) and John H. Owoc.

9           Specifically, Monster moves to exclude Mr. Voth’s variable cost, incremental  
10 cost, and apportionment opinions contained in at least paragraphs 3(c)-(d), 44-48, and  
11 72-77 of his expert report<sup>1</sup> as inadmissible under Federal Rule of Evidence 702. Mr.  
12 Voth’s variable cost and incremental cost opinions must be excluded because they  
13 depend on key assumptions about sales of Defendants’ BANG product that VPX’s  
14 30(b)(6) witness revealed were wrong. Mr. Voth’s apportionment opinion must be  
15 excluded because (1) he contradicts his stated assumption that Defendants will be  
16 found liable for false advertising, (2) he merely parrots the opinion of Defendants’  
17 survey expert without conducting a separate apportionment analysis; and (3) his  
18 opinion is based on only *one part* of Defendants’ advertising campaign promoting  
19 “Super Creatine” without any analysis of the total damages impact of the entire  
20 advertising campaign.

21           This Motion is based on this Notice of Motion and Motion, the Memorandum  
22 of Points and Authorities in Support of this Motion served and filed herewith, the  
23 Declaration of Jennifer Popp served and filed herewith, and upon such other and  
24 further evidence and argument as may be presented to the Court. This Motion is made  
25 following the conference of counsel pursuant to L.R. 7-3 which took place on July 19,  
26 2021.

27 \_\_\_\_\_  
28 <sup>1</sup> Mr. Voth’s expert report is attached as **Exhibit 26** to the Declaration of Jennifer  
Popp, filed herewith.

1  
2 Dated: December 20, 2021

Respectfully submitted,  
3  
HUESTON HENNIGAN LLP  
4

5 By: Sourabh Mishra  
6 Sourabh Mishra  
7  
8 Attorneys for Plaintiff  
9 MONSTER ENERGY COMPANY  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28